

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

GEORGE MOJET, JR.,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO. 1:06-CV-321 TS
)	
TRANSPORT DRIVER, <i>et al.</i> ,)	
)	
Defendants.)	

OPINION AND ORDER

George Mojet, Jr., a *pro se* prisoner, seeks leave to proceed *in forma pauperis* on appeal. His claims were dismissed by the district court pursuant to 28 U.S.C. § 1915A.

Section 1915A requires district courts to dismiss not only complaints that are frivolous or malicious, but also those that fail to state a claim on which relief may be granted or seek relief that is foreclosed by official immunity. Exceptional cases may arise in which a district court grants leave to appeal *in forma pauperis* to a plaintiff who appeals a close question under § 1915A in good faith. The principle of *Tolefree*— that the district court should identify such cases explicitly, with reasons— remains appropriate.

Hains v. Washington, 131 F.3d 1248, 1250 (7th Cir. 1997). “[T]he granting of leave to appeal *in forma pauperis* from the dismissal of a frivolous suit is presumptively erroneous.” *Tolefree v. Cudahy*, 49 F.3d 1243, 1244 (7th Cir. 1995) (applying former 28 U.S.C. § 1915(d)).

Pursuant to 28 U.S.C. § 1915(a)(3), “An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” For the reasons stated in this Court’s order dated November 22, 2006 (DE 7), this appeal is not taken in good faith because it is not an exceptional case which involves a close question under Section 1915A. Mr. Mojet’s allegations do not state a claim under § 1983 against the named Defendants. Mr. Mojet may still proceed with this appeal, but to do so he must pay the full \$455.00 filing fee in advance.

In addition, Mr. Mojet has filed a motion for a certificate of appealability. Because this is a civil rights case, the certificate of appealability is inapplicable and will be denied as moot. *Moore v. Pemberton*, 110 F.3d 22, 24 (7th Cir. 1997).

For the foregoing reasons, the Court:

- (1) DENIES the motion for leave to proceed on appeal *in forma pauperis* (DE 13);
- (2) GRANTS George Mojet, Jr. to and including January 30, 2007, within which to pay the \$455.00 filing fee;
- (3) CAUTIONS George Mojet, Jr., that if he does not pay this filing fee by that date, this appeal may be dismissed without further notice; and
- (4) DENIES AS MOOT the motion for a certificate of appealability (DE 12).

SO ORDERED on January 10, 2007.

s/ Theresa L. Springmann
THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT